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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 BILLING ASSOCIATES NORTHWEST,  
9 LLC,

10 Plaintiff,

11 v.

12 ADDISON DATA SERVICES, LLC, et al.,

13 Defendants.

CASE NO. C20-1854 RSM

ORDER DISMISSING CLAIMS AND  
GRANTING LEAVE TO AMEND

14 **I. INTRODUCTION**

15 This matter is before the Court on two motions seeking dismissal of Plaintiff's claims  
16 against all defendants but one: Addison Data Services, LLC ("ADS"). Dkts. #16 and #17. The  
17 case arises out of a business arrangement between Plaintiff Billing Associates Northwest, LLC  
18 ("Billing Associates") and ADS. The pair sold submetering and billing services to Washington  
19 property owners and managers so that tenants could be billed for their individual usage even  
20 where utility providers only billed on a property-wide basis. In providing the services, the pair  
21 received money from tenants and remitted the money to the property owners or managers.  
22 However, ADS ultimately experienced difficulties, declared for bankruptcy, and left Billing  
23 Associates holding the bag.  
24

1 Billing Associates now sues ADS and individuals and entities that allegedly managed or  
2 owned ADS. Billing Associates alleges that all of the defendants breached a fiduciary duty owed  
3 to Billing Associates and that the non-ADS defendants aided, abetted, facilitated, and covered up  
4 ADS' breach. The non-ADS defendants now seek dismissal, arguing that they are not subject to  
5 this Court's personal jurisdiction and that Billing Associates' claims fail because they have  
6 already been settled, are barred by an applicable statute of limitations, fail as a matter of law, and  
7 are not adequately alleged. Dkts. #16 and #17. Billing Associates opposes the motions to dismiss  
8 and argues that, at a minimum, it should be granted leave to amend and supplement its claims.  
9 Dkt. #21. Having considered the matter, the Court dismisses Billing Associates' claims against  
10 the moving defendants, but grants leave to file an amended complaint.

## 11 II. BACKGROUND

### 12 A. The Parties

13 In addition to its business partner ADS, Billing Associates has sued individuals Leslie W.  
14 Kreis, Jr. ("Kreis"), David Durham, Christian Harper ("Harper"),<sup>1</sup> Pat Craine, and Joe Craine  
15 and business entities Mendoza Line Capital, LLC,<sup>2</sup> Korenvaes Horizon Partners, L.P., and  
16 Corbett Capital LLC.<sup>3</sup> Dkt. #1 at ¶¶ 1–12. Because Billing Associates invokes the Court's  
17 diversity jurisdiction, it alleges that it is a citizen of Washington and that all defendants are  
18 citizens of states other than Washington. *Id.* But beyond alleging the citizenship of these non-  
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20 <sup>1</sup> Defendants indicate that Billing Associates wrongly named Christian Harper as "Christopher  
21 Harper" in the caption and referred to him, throughout the Complaint, as "Christopher Harper"  
and "Hooper." Dkt. #16 at 1 n.2.

22 <sup>2</sup> Defendants indicate that Billing Associates wrongly named Mendoza Line Capital, LLC as  
23 "Menedoza Line Capital, LLC" in the caption of this action. Dkt. #16 at 1 n.1.

24 <sup>3</sup> Billing Associates also names "Jane/John Does" as "fictitious names for persons receiving  
constructive trust property." Dkt. #1 at ¶ 11. Neither side addresses Jane/John Does.

1 ADS defendants, Billing Associates does not allege their specific relationships with ADS or,  
2 apart from Kreis and Harper, their substantive involvement in the events giving rise to its claims.  
3 More generally, Billing Associates simply alleges that the non-ADS defendants—including Kreis  
4 and Harper—were “owne[rs] and manage[rs]” of ADS. *Id.* at ¶ 31.

### 5 **B. Billing Associates, ADS, and Their Services**

6 As noted, Billing Associates and ADS<sup>4</sup> provided services to Washington property owners  
7 and managers (the “Customers”) that rented properties to multiple tenants. *Id.* at ¶ 14. These  
8 properties often received a single, property-wide bill from their utility providers without  
9 consideration to the individual usage of the tenants. *Id.* By working with Billing Associates and  
10 ADS, Customers were able to submeter the usage of their individual tenants. This afforded  
11 Customers the ability to pay the property-wide utility bills directly and to have ADS subsequently  
12 bill each tenant based on their proportional use of the utility services. ADS collected money  
13 from tenants directly and remitted the money to the Customers. *Id.* at ¶ 15. For the services,  
14 ADS was authorized to collect an additional fee (the “ADS Fee”) from the tenants. *Id.*

15 The relationship between Billing Associates and ADS was governed by an agreement  
16 between them. Under the contract, Billing Associates essentially acted as a sales representative  
17 for ADS, entering into standardized contracts with Customers and serving as a local point of  
18 contact. *Id.* at ¶ 14. Meanwhile, ADS provided the submetering and billing services and  
19 managed payments and reimbursements. As compensation for its work, Billing Associates  
20 received a portion of the ADS Fee. Dkt. #20 at 4.

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22 <sup>4</sup> The Complaint alleges that Billing Associates first entered a business relationship with  
23 “Addison Data Services, LLC, a Delaware limited liability company (ADS DEL)” and that ADS  
24 DEL subsequently “assigned its rights and delegated its duties under” the agreement with Billing  
Associates to ADS, now a Texas limited liability company. Dkt. #1 at ¶¶ 2, 14. For simplicity,  
the Court treats ADS as a single, Texas entity.

For unspecified reasons, Billing Associates terminated its business arrangement with ADS on June 20, 2014. Dkt. #1 at ¶ 20. At the same time, and contingent on their ability to negotiate and agree on material terms, Billing Associates “offered to continue its contractual relationship with ADS for 120 days so that Billing Associates could smoothly transition the [ ] Customers to a different payment center.” *Id.* Any negotiations proved unsuccessful and instead, on July 18, 2014, ADS filed a bankruptcy petition, triggering an automatic bankruptcy stay. *Id.* at ¶¶ 21–24. “Between July 22 and July 24, 2014, [ADS’ Chief Executive Officer Harper] and Billing Associates were in communication” with Harper offering to disburse collected funds to their Customers if Billing Associates would agree to enter a new agreement with a new business entity. *Id.* at ¶ 27. No such agreement was reached.

Billing Associates alleges that Kreis signed ADS’ bankruptcy petition as its “managing partner” and that the petition failed to schedule “any actions that ADS might have against any of its officers, directors, managers, members, or managing agents.” *Id.* at ¶¶ 25, 28.<sup>5</sup> Nevertheless, Billing Associates alleges that ADS’ bankruptcy estate had possible claims against the non-ADS defendants because ADS transferred Customers’ money to its “owne[rs] and manage[rs].” *Id.* at ¶¶ 31–34, 40. These possible claims were investigated by the bankruptcy trustee but were not pursued further. *Id.* at ¶¶ 30–35. Ultimately, ADS’ bankruptcy “was closed and terminated on December 27, 2016.” *Id.* at ¶ 36.<sup>6</sup>

<sup>6</sup> The Complaint further details Billing Associates' attempts to obtain relief within the ADS bankruptcy in order to pursue claims that ADS and the ADS bankruptcy estate may have had against ADS' owners and managers—the non-ADS defendants. Dkt. #1 at ¶ 37. The Complaint

1           **E. This Action**

2           The primary claim advanced in Billing Associates’ Complaint is that ADS, and its owners  
3 and managers, owed Billing Associates and their Customers a fiduciary duty upon receiving  
4 money from tenants and that ADS and the non-ADS defendants all breached their duties. *Id.* at  
5 ¶¶ 42–43. Billing Associates maintains that the breach resulted in Billing Associates paying  
6 Customers “\$416,466.77 and suffer[ing] an additional over \$847,000 in business losses.” *Id.* at  
7 ¶ 44.<sup>7</sup> In addition to its primary claim, Billing Associates asserts claims against the non-ADS  
8 defendants for having “aided, abetted, facilitated and covered up ADS’ breach of fiduciary duty.”  
9 *Id.* at ¶ 49.

10                                   **III.       DISCUSSION**

11           The Court finds the Complaint wholly lacking, often to the point of confusion, and  
12 suffering from a multitude of deficiencies. Additionally, the Court notes that the non-ADS  
13 defendants are seeking dismissal of Billing Associates’ claims on the basis that the Court lacks  
14 personal jurisdiction and also on the basis that Billing Associates, for several reasons, fails to  
15 state claims upon which relief can be granted. The Court ultimately finds the Complaint’s  
16 allegations insufficient under Federal Rule of Civil Procedure 12(b)(6). However, because the  
17 Court struggles simply to determine the particulars of Billing Associates’ claims and because the

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19 alleges that those claims were never abandoned by the bankruptcy trustee and that Billing  
20 Associates was in the process of recovering those claims but that “the claims ADS might have  
21 against ADS’ [m]anagers remains property of the [bankruptcy estate] and subject to the”  
22 automatic bankruptcy stay. *Id.* at ¶ 39. Needless to say, the potential claims were speculative at  
the time the Complaint was filed. In its response to the motions, Billing Associates indicates that  
further proceedings have occurred in the bankruptcy case and that, if granted leave, it intends to  
amend and supplement its Complaint in light of those proceedings. Dkt. #21 at 7 n.4, 17.

23 <sup>7</sup> Billing Associates also seeks to recover for similar losses incurred by two similar businesses—  
Billing Associates Northeast and Billing Associates Southeast. Dkt. #1 at ¶¶ 45–47. The  
24 Complaint alleges that those entities “have assigned their claims to Billing Associates” but does  
not plead the corporate form or the citizenship of those entities. *Id.*

1 Court determines that leave to amend should be granted, the Court does not address the additional  
2 issues raised by the motions at this time.

3 The Court recognizes the practical difficulties of learning the facts of a case and drafting  
4 a complaint adequately setting forth legal claims, often with filing deadlines looming. But the  
5 Complaint in this case appears to lack foundational analysis of Billing Associates' claims. The  
6 Court's expectations demand more. *See* LOCAL RULES W.D. WASH. LCR Preamble ("The judges  
7 of this district expect a high degree of professionalism from the lawyers practicing before  
8 them."). Billing Associates' counsel appears to concede that the Complaint is lacking in some  
9 regards. *See* Dkt. #21 at 17 (indicating an "intent to supplement the Complaint and, at the same  
10 time, amend the Complaint to clarify [Billing Associates'] cause of action to" address the issues  
11 raised in the motions). Billing Associates' claims do appear complex. But counsel's knowledge  
12 and research should enable the Court to understand them with less effort than was required at this  
13 stage of this case. Regardless, Billing Associates' briefing demonstrates an understanding of the  
14 underlying legal principles and the Court trusts that counsel will heed the arguments set forth in  
15 the motions and the issues noted by the Court to better set forth adequate claims in any amended  
16 complaint that may be filed.<sup>8</sup>

17 **A. Applicable Legal Standard**

18 Dismissal under Federal Rule of Civil Procedure 12(b)(6) "can be based on the lack of a  
19 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."

20 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *see also* FED. R. CIV. P.

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22 <sup>8</sup> The Court does note and appreciate that Billing Associates' counsel attempted to reach  
23 agreement with defense counsel on delaying the Court's consideration of the motions until after  
24 an amended Complaint was filed. But even in the absence of agreement—whether or not  
reasonably withheld—counsel could have conserved judicial resources by filing a simple motion  
to amend, especially in light of the liberal standard by which such motions are judged.

1 8(a)(2). While considering a Rule 12(b)(6) motion, the court accepts all facts alleged in the  
2 complaint as true and makes all inferences in the light most favorable to the non-moving party.  
3 *Baker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (citations omitted).  
4 The court is not required, however, to accept as true a “legal conclusion couched as a factual  
5 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,  
6 550 U.S. 544, 555 (2007)). “Determining whether a complaint states a plausible claim for relief  
7 will . . . be a context-specific task that requires the reviewing court to draw on its judicial  
8 experience and common sense.” *Id.* at 679 (citations omitted).

9 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
10 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678 (quoting  
11 *Twombly*, 550 U.S. at 570). This requirement is met when the plaintiff “pleads factual content  
12 that allows the court to draw the reasonable inference that the defendant is liable for the  
13 misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). The complaint need not include  
14 detailed allegations, but it must have “more than labels and conclusions, and a formulaic  
15 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. “The  
16 plausibility standard is not akin to a probability requirement, but it asks for more than a sheer  
17 possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are  
18 merely consistent with a defendant’s liability, it stops short of the line between possibility and  
19 plausibility of entitlement to relief.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556,  
20 557). Absent facial plausibility, a plaintiff’s claims must be dismissed.

#### 21 **B. The Complaint Fails to Sufficiently State Business Associates’ Claims**

22 The Complaint fails to adequately set forth claims upon which relief can be granted on  
23 several bases. First, Billing Associates fails to demonstrate that it has plausible claims against  
24 the non-ADS defendants. The central claim of Billing Associates’ lawsuit is that the non-ADS

1 defendants illegitimately received money from ADS that in fact belonged to Customers. As  
2 currently stated, however, the Complaint's claims lack factual support. Billing Associates first  
3 alleges that "ADS may have transferred the [] Customers [sic] Money to benefit" the non-ADS  
4 defendants "directly or indirectly." Dkt. #1 at ¶ 33. But the Complaint immediately backtracks  
5 by indicating that after "all reasonable and proper inquiry" Billing Associates "could make no  
6 determination" whether "the [] Customers' Money" had been transferred to these defendants. *Id.*  
7 at ¶ 34. This position is changed again as Billing Associates alleges that it "received further  
8 information that leads it to reasonably believe": (1) "that ADS did transfer the [] Customers'  
9 Money to benefit the [non-ADS defendants] directly or indirectly" and (2) that "Customers'  
10 Money was taken by the [non-ADS defendants] with full knowledge that the money belonged to  
11 Billing Associates." *Id.* at ¶ 40. Billing Associates may not hide the ball in this manner.<sup>9</sup> If  
12 factual allegations support Billing Associates' conclusion, it may disclose them for the Court to  
13 consider. Without more, Billing Associates' allegations do not demonstrate plausible, as opposed  
14 to possible, claims against the non-ADS defendants.

15 Second, Billing Associates fails to establish that it may properly pursue the claims it  
16 asserts. Billing Associates specifically alleges that ADS received money belonging to Customers  
17 and was obligated to disburse that money to Customers. *Id.* at ¶ 40. While Billing Associates  
18 alleges that the non-ADS defendants also received money belonging to Billing Associates,  
19 Billing Associates previously specified that ADS segregated Customer funds from the ADS Fee.  
20 Dkt. #1 at ¶ 15. Billing Associates does not identify a basis on which it may assert claims that

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22 <sup>9</sup> Billing Associates, in support of its opposition to the motions, indicates that it "contacted ADS'  
23 former president" who "reported that he and Harper were always compensated from monies that  
24 ADS controlled" and that he provided further reasons supporting Billing Associates' "reasonable  
belief [that] the [non-ADS defendants] benefitted from ADS improperly using [Customers'  
money] to benefit themselves." Dkt. #21 at 8; Dkt. #24 (Declaration of Steven Michael Collier,  
former ADS president). Needless to note, these allegations are not reflected in the Complaint.



1 would appear to belong to its Customers as they involve money only due to Customers.<sup>10</sup> See  
2 Dkt. #21 at 2 (Billing Associates arguing that the action, “[i]n short,” relates to ADS “breach[ing]  
3 its fiduciary duty to the [Customers] and that the [non-ADS defendants] aided and abetted ADS  
4 in breaching its fiduciary duty to the [Customers]”); *id.* at 6 (“ADS failed to deliver [Customers’  
5 money] to [Customers]”).

6 Third, Billing Associates fails to attribute any individual actions to six of the eight non-  
7 ADS defendants. Billing Associates alleges that these defendants received Customer funds they  
8 knew they were not entitled to receive. Dkt. #1 at ¶ 40. But the Complaint does not make clear  
9 that Billing Associates’ allegations are against each and every one of the non-ADS defendants.  
10 Conversely, Billing Associates’ briefing appears to reveal a basis only for claiming that Kreis  
11 and Harper benefitted from the receipt of Customer money. See Dkt. #21 at 8 (alleging that  
12 Harper was compensated with ADS funds and that ADS relocated to property Kreis owned and  
13 controlled). Billing Associates argues that it is merely relying on permissible “information and  
14 belief” allegations. Dkt. #21 at 13. But, as Billing Associates notes, where “information and  
15 belief” allegations are used, the plaintiff must still “include ‘a statement of the facts upon which  
16 the allegations are based.’” *Id.* (citing *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1279 n. 3  
17 (D.C.Cir. 1994)) (citations omitted). Even if Billing Associates may rely on “information and  
18 belief” allegations, its Complaint does not contain adequate factual support for its beliefs.

19 Fourth, Billing Associates relies on arguments not supported by its Complaint. Billing  
20 Associates’ briefing alludes to principal-agent theories and the obligations of bailees. Dkt. #21

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22 <sup>10</sup> Billing Associates does allege that it made payments to Customers, possibly alluding to a  
23 theory of equitable subrogation without pleading the facts to support such a claim. See *Gen. Star*  
24 *Indem. Co. v. Vesta Fire Ins. Corp.*, 173 F.3d 946, 949 (5th Cir. 1999) (“Equitable subrogation  
is the legal fiction through which a person or entity, the subrogee, is substituted, or subrogated,  
to the rights and remedies of another by virtue of having fulfilled an obligation for which the  
other was responsible.”).

1 at 14 (“Here, ADS was the [Customers’] agent hired to allocate, bill, and collect the [Customers’  
2 money] and [the ADS Fee] from the” Customers’ tenants.); *id.* (arguing that “ADS owed a  
3 fiduciary duty to the [Customers] and the Billing Associates as a bailee of the [Customers’  
4 money]”).<sup>11</sup> But Billing Associates does not make clear why it stands in the same position as its  
5 Customers. Similarly, Billing Associates’ briefing points to a Texas corporate trust fund  
6 doctrine,<sup>12</sup> but that theory is unsupported by the allegations of the Complaint. Such claims may  
7 be possible, but the Complaint does not plead them.

### 8 C. Leave to Amend

9 Where a complaint is dismissed for failure to state a claim, “leave to amend should be  
10 granted unless the court determines that the allegation of other facts consistent with the  
11 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*  
12 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). There is little doubt that Billing Associates’  
13 Complaint suffers from a multitude of deficiencies and defendant unsurprisingly argue that  
14 dismissal should be with prejudice.<sup>13</sup> But dismissal without leave to amend is a high hurdle. *See*

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16 <sup>11</sup> There is some indication that Billing Associates was entitled to a portion of the ADS Fee such  
17 that ADS could have been a bailee for Billing Associates. But, focusing on the allegations of the  
18 Complaint, Billing Associates does not adequately allege that is the case.

19 <sup>12</sup> *See* Dkt. #21 at 15 (arguing that under doctrine and upon insolvency and cessation of business,  
20 “officers and directors hold the corporate assets in trust for the corporate creditors”) (citing *Fagan*  
21 *v. La Gloria Oil & Gas Co.*, 494 S.W.2d 624, 628 (Tex. Civ. App. 1973)). The Complaint does  
22 not allege that ADS ceased business.

23 <sup>13</sup> The moving defendants’ best argument against granting leave to amend may well be that  
24 Billing Associates’ claims fail because they are barred by a four-year statute of limitations under  
Texas law. *See* Dkt. #17 at 6–7; Dkt. #22 at 1–3. Billing Associates’ response that ADS’  
bankruptcy stay tolled the statute of limitations may not be sufficient. Dkt. #22 at 2 (moving  
defendants replying that Billing Associates failed to provide any authority indicating that the  
bankruptcy stay applicable to claims against ADS also tolled the statute of limitations as to claims  
against individual owners and managers of ADS). However, due to the Court’s uncertainty as to  
the claims asserted and the timeline of events ultimately alleged, the Court does not address the  
issue at this time.

1 *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (“Dismissal without leave to amend is  
2 improper unless it is clear, upon de novo review, that the complaint could not be saved by any  
3 amendment.”) (quotation marks and citations omitted). At the same time, Billing Associates  
4 indicates that its investigation of its claims has continued and that it has additional factual  
5 allegations, and possibly claims, to include in an amended and supplemented complaint.  
6 Accordingly, the Court grants Billing Associates leave to amend its Complaint.

7 **IV. CONCLUSION**

8 Accordingly, and having considered the motions, the briefing of the parties, and the  
9 remainder of the record, the Court finds and ORDERS that:

- 10 1. Defendants’ Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim (Dkt. #17) is  
11 GRANTED. All of Plaintiff Billing Associates Northwest, LLC’s claims against  
12 Defendants Leslie W. Kreis, Jr, Mendoza Line Capital, LLC, David Durham, Korenvaes  
13 Horizon Partners, L.P., Christian Harper, Corbett Capital LLC, Pat Craine, and Joe Craine  
14 are DISMISSED.
- 15 2. Plaintiff Billing Associates Northwest, LLC is granted leave to file an amended complaint  
16 within fourteen (14) days of this Order.
- 17 3. Defendants’ Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. #16)  
18 is DENIED, without prejudice, as moot.

19 DATED this 2<sup>nd</sup> day of July, 2021.

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22 RICARDO S. MARTINEZ  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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